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## FATHERS' RIGHTS

*This brochure explains some rights of single fathers or fathers going through a divorce.*

### Establishing Paternity

It is important to prove paternity. It gives you legal rights with the child and lets you pursue visitation or custody.

If you have a child with a woman who was not your wife when the child was born, then under the law the child does not have a legal father. The mother has sole custody of the child.

Paternity can be proven through a Paternity Acknowledgement form signed under oath. This form can be signed at the hospital before mom and child leave the hospital. You can also sign a form at the Department of Health and Environmental Control (DHEC) or the county health department where the child was born. You should only fill out this form if you are sure you are the father. If you have doubts then do not sign the form. Instead, contact the Child Support Enforcement Division office of the Department of Social Services (DSS). DSS can help you find out if you are the father through a DNA test.

Find out if you are the father as soon as possible. Delays could cause you to lose rights to the child.

If you get papers that name you as the father of a child and have information about a hearing then act quickly. Contact the DSS Child Support Enforcement Division. They can explain what steps you need to take. They can also help you with genetic testing.

### Child Support, Custody, and Visitation

The court looks at the best interests of the child to determine who gets custody. For example, the court will look at how the child gets along with each parent; changes in school, home and community; mental and physical health of the child and parents; and sometimes the child's wishes.

Parents who don't have custody can visit with the child. The judge can increase or decrease the amount of visitation if there is a change in circumstances.

Both parents must support the child, usually till the age of 18. Sometimes the court can order that child support last longer. This usually happens if the kid wants to finish his or her education or is handicapped.

You can usually pay child support to the Child Support Enforcement (CSE) office of DSS. You cannot pay child support to CSE if they are already pursuing the case. You cannot pay child support to CSE if a court ordered you to pay the other parent directly. A parent who does not have custody can apply for child support if the case is not being enforced through CSE.

You can have visitation with your child even if you are behind on child support payments as long as the court has given you visitation rights. The amount of visitation you receive can affect how much child support you pay. For example if the court has ordered overnight visitation for more than 109 nights each year, then your payments can be reduced. You can petition the court to do this.

The court can increase, decrease, or stop child support. You probably have to show a change in circumstances for this to happen. Usually you can show that if you make more or less money than you use to.

## **Welfare and Education**

Both parents are responsible for the welfare and education of the child. Each parent has the same powers, rights, and duties. Each parent can get a hold of all educational records and medical records.

Both parents can also go to school activities, unless a court says one can't. Neither parent can take the child by force from a parent who has legal custody.

## **DSS Removal Actions**

DSS can take a child from a parent because of abuse, neglect or abandonment. If they do, DSS must tell you where your child is. DSS will not do this if you are accused of mistreatment.

## **Other Parent Takes Child**

If the other parent takes the child and you cannot find the child or the parent then you have certain rights. The Federal Parent Locator Services (FPLS) can be used in two cases. The first is if a civil action has been filed in state court to make or enforce a custody order. The second is if a criminal custodial interference case is being investigated or prosecuted. DSS's Office of CSE can tell you more about this program. You cannot use this program if there is an order denying you information about their location.

## **Taxes**

You may or may not be able to claim the child as a dependent on your taxes. This is true even if you are the proven father. If you are divorced or separated it will depend on custody. Usually the parent who has the most custody during a calendar year can claim the dependency. But sometimes the court can say who gets the claim. Or one parent can give written permission for the other to make the claim. She would also have to fill out a special form with the IRS. If you and the mother were not married when the child was born, then the law can get tricky. It is best to consult a lawyer for such matters.

Special rules apply if you are married to someone else and filed a joint return. If your refund was taken due to back child support, then you need to contact the IRS. Your spouse can probably get her share of the tax refund, while your share goes to back child support.

This is not all of the information that you need to know about father's rights. Speak to an attorney.

If you do not have a lawyer, the South Carolina Bar Lawyer Referral Service can give you the name of a lawyer who is willing to meet with you and advise you at a lower rate. For the name of a lawyer in your area; call the Lawyer Referral Service (800) 868-2284 statewide or (803) 799-7100 in Columbia.

If you have a very low income, your local legal services office may be able to help you. To get in touch with them, call the Legal Assistance Telephone Intake Service for a referral (888) 346-5592 statewide or (803) 744-9430 in Columbia.

Ask -A-Lawyer volunteers from the South Carolina Bar are also available to answer your legal questions for free. Call toll free, (888) 321-3644.

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